

**UNITED STATES DISTRICT COURT**  
for the  
**Southern District of California**

United States of America

v.

Francisco Gutierrez

Date of Original Judgment:

11/3/2015

Date of Previous Amended Judgment:

(Use Date of Last Amended Judgment if Any)

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Case No: 15-cr-0334-JO

USM No: 30328-298

Ezekiel E. Cortez

Defendant's Attorney

**ORDER REGARDING MOTION FOR SENTENCE REDUCTION PURSUANT TO 18 U.S.C. § 3582(c)(2)**

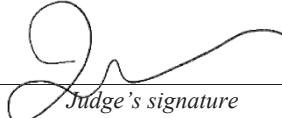
Upon the motion of the Defendant under 18 U.S.C. §3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, IT IS ORDERED that the motion is **DENIED**.

The Defendant asserts that Part A of Amendment 821, which limits "status points" from the defendant's criminal history calculation if he committed the instant offense while under "probation, parole, supervised release, imprisonment, work release, or escape status[,]" is applicable to his case. *See USSG. § 4A1.1(e).* While the Defendant's criminal history points would change under Amendment 821, the sentencing judge found the Defendant to be a career offender, automatically placing him at a criminal history category VI. (Sentencing Transcript, Dkt. 72 at 46.) Accordingly, the defendant is ineligible for a sentencing reduction because any changes to his criminal history points would have no affect on his criminal history category as a career offender. *See U.S.S.G. § 4B1.1(b) ("A career offender's criminal history category in every case under this subsection shall be Category VI."); USSG. § 1B1.10 app. note 1(A) ("[A] reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) ... [if] the amendment does not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline."); see also United States v. Axtle, No. 11-CR-00836-RS-2, 2024 WL 4476664, at \*2 (N.D. Cal. Oct. 11, 2024) ("Amendment 821 does not apply to [defendant's] sentence, because his criminal history category was not impacted by his status points but was instead governed by his career offender status.")*

While the Defendant argues that his predicate offenses no longer qualify as a basis for career offender status, he "offers no authority for the proposition that a § 3582(c)(2) proceeding may be used to revisit a career offender determination." *United States v. Waters*, 648 F.3d 1114, 1118 (9th Cir. 2011); *see also United States v. Wilson*, No. 24-1134, 2024 WL 4371621, at \*1 (7th Cir. Oct. 2, 2024) ("§ 3582(c)(2) motion is not the proper vehicle to challenge a career-offender designation."); *United States v. Russell*, No. 24-40430, 2025 WL 720937, at \*1 (5th Cir. Mar. 6, 2025)("[T]o the extent [Defendant] challenges the court's sentencing determination that he is a career offender under the Guidelines, he cannot relitigate application of the career-offender enhancement in a § 3582(c)(2) proceeding."). Accordingly, the Court declines to reexamine Defendant's status as a career offender. *Waters* at 1118.

**IT IS SO ORDERED.**

Order Date: 4/24/2025



Jinsook Ohta  
Judge's signature

Honorable Jinsook Ohta, United States District Judge

Printed name and title